IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. application No. 642 of 2005

Date of decision:- 27/4/06

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date:- 27-04-06 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No. 642 of 2005
(Old No. 5993 of 1989)

Dalip Kumar S/o Kali Ram
R/o JP-74 Peetampura
P.S, Shalimar Bagh, New Delhi .....Applicant
Versus
State of Uttaranchal ...Respondent

Sri S. K. Agarwal senior Advocate assisted by Sri S.S. Yadav learned counsel for applicant.
Sri A. Rab learned Addl. G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the order dated 07.06.1989 passed by the Sessions Judge, Nainital and order dated 7.6.1989 framing the charge under section 306, 304B IPC against the applicant in S.T. No.353/1988 State Vs. Raj Kumari & others.

2) Brief facts of the case are that on 29.05.1987 Smt. Shashibala wife of the applicant died at her parental house as a result of injuries caused by 32 bore-revolver which admittedly belonged to Rajendra Pal Singh-the brother of the deceased. Immediately after the occurrence, the first information report was lodged at the police station by the brother of the deceased. It was alleged that the applicant and his mother threatened the deceased and due to which the deceased committed suicide by his revolver. Thereafter, the dead body was sent for postmortem and a case was registered under section 302 IPC. Thereafter, the police investigated the matter and the case was converted to one under section 304-B IPC. Thereafter, the police submitted the chargesheet against the applicant & others under section

304B IPC. The learned Sessions Judge framed the charges under section 306 IPC against the applicant, his mother Smt. Raj Kumar and his father Kali Ram. On 27.02.1989 an application was moved by the DGC(cri) before the Sessions Judge praying for an alternative charge under section 304B IPC. On 08.03.1989 an alternative charge under section 304B IPC was framed against the applicant and others. Charges under sections 304B, 306 IPC were framed against the accused persons.

3) Feeling aggrieved by the charges, a petition u/s 482 Cr.P.C. was preferred by the applicant-Dalip Kumar before the Allahabad High Court. After examination of material on record, the Allahabad High Court disposed of the petition vide order dated 3.4.1989 whereby the contention of the applicant that the ingredients of section 304B were not made out, was found to be correct. So far as the section 306 IPC is concerned, the Allahabad High Court directed the applicant to approach the Sessions Judge and to seek his discharge under section 227 Cr.P.C. The DGC Criminal moved an application praying for framing of charge under section 306 IPC as well as under section 304B IPC. Ultimately, vide order dated 07.06.1989 the learned Sessions Judge held that there was sufficient material on record to frame the charge against the accused under section 304-B IPC in alternative for the offence under section 306IPC. Feeling aggrieved by the order of the Sessions Judge, the petition has been preferred.

4) Learned counsel for the applicant contended that the police initially lodged a report under section 302 IPC and the I.O. recovered the revolver from a room where

the incident took place. It was further contended that the nature of injuries does not reveal that it was a suicidal case. It was further contended that the report of the ballistic expert does not support the prosecution version with regard to suicidal death. It was further contended that on 3.4.1989 the Allahabad High Court in C482No.2712/1989 observed that the ingredients of section 304B IPC are not made out from perusal of the evidence. Vide order dated 3.4.198, it was further directed that the Sessions Judge has to consider as to whether the ingredients of section 306 IPC are made out from the facts and circumstances of the case or not. It was further contended that the Sessions Judge while considering the facts and circumstances has only considered that the death took place within seven years from the date of marriage and the death was unnatural. Learned Sessions Judge had also considered that she was subjected to cruelty or harassment by her husband or his relatives in connection with dowry demand. Learned Sessions Judge has not considered the main ingredients as to whether the deceased was subjected to cruelty soon before the death in connection with dowry. Learned Addl. GA refuted the contention. Perusal of the record reveals that the observations of the Allahabad High Court in C482 No.2712/1989 were not taken in the right prospective by the learned Sessions Judge. The entire confusion was created by the application of the DGC criminal by which the DGC criminal had averred that the High Court has only directed to hear the matter afresh only in connection with section 306 IPC. The Code of Criminal Procedure provides that the Sessions Judge has the power to modify/amend the charge at any Stage. However, the Allahabad High Court was of the view that the ingredients of section 304-B IPC from the

evidence is not made out, but the option was given to the learned Sessions Judge as to whether the charges are made out or not. Learned Sessions Judge has power to modify the charge. Learned Sessions Judge should have sue-moto considered this fact which has been indicated in the judgment of the Allahabad High Court and should have proceeded accordingly. Learned Sessions Judge has not considered as to whether the ingredients of section 306 IPC are made out from the facts and circumstances of the case. Section 306 IPC provides as under:-

> "306. Abetment of suicide – If any person commits suicide, Whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."
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> The ingredients of section 306 IPC are as follows:- (i) that any person committed suicide, (ii) that such a commission of suicide by the consequence of an abatement & (iii) that the abatement was made by the accused.

5) Perusal of the ingredients of section 306 IPC reveals that the learned Sessions Judge should have considered as to whether there is prima facie evidence or not. He had not considered this aspect. The Sessions Judge has only considered that the death took place within seven years from the date of marriage and the death was unnatural. It was also considered that she was subjected to cruelty or harassment by her husband or his relatives in connection with dowry demand. It would be just and proper to set aside the charges

framed by the learned Sessions Judge and the matter may be remitted back.

6) In view of the above, the charges framed by the learned Sessions Judge are set-aside and the matter is remitted back to the Sessions Judge, who will pass the appropriate order in the light of the observations made above. The Sessions Judge will decide the matter without being influenced by the order of the High Court.

7) The petition is disposed of accordingly. All the pending miscellaneous application(s) in the case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 27.04.2006
LSR